

1 Spencer A. Schneider, Esq., SBN 175071  
2 Douglas A. Greer, Esq., SBN 129987  
3 BERMAN BERMAN BERMAN  
4 SCHNEIDER & LOWARY, LLP  
5 11900 West Olympic Boulevard, Suite 600  
6 Los Angeles, California 90064-1151  
7 Telephone: (310) 447-9000  
8 Facsimile: (310) 447-9011  
9 Email: [saschneider@b3law.com](mailto:saschneider@b3law.com); [dagreer@b3law.com](mailto:dagreer@b3law.com)

6 Attorneys for Defendant  
7 DB INSURANCE CO., LTD. (U.S. BRANCH)

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 SENECA SPECIALTY  
12 INSURANCE COMPANY,

13 Plaintiff,

14 v.

15 DB INSURANCE COMPANY,  
16 LTD., F/K/A DONGBU  
17 INSURANCE COMPANY, LTD.,

18 Defendant.

} Case No. 8:18-cv-1163-AG(ADSx)  
[Assigned to Judge Andrew J. Guilford]

**STIPULATED PROTECTIVE ORDER**

18 **1. PURPOSE AND LIMITS OF THIS ORDER**

19 Discovery in this action is likely to involve confidential, proprietary, or  
20 private information requiring special protection from public disclosure and from use  
21 for any purpose other than this litigation. Thus, the Court enters this Protective  
22 Order. This Order does not confer blanket protections on all disclosures or responses  
23 to discovery, and the protection it gives from public disclosure and use extends only  
24 to the specific material entitled to confidential treatment under the applicable legal  
25 principles. This Order does not automatically authorize the filing under seal of  
26 material designated under this Order. Instead, the parties must comply with L.R. 79-  
27 5.1 if they seek to file anything under seal. This Order does not govern the use at  
28 trial of material designated under this Order.

## 2. DESIGNATING PROTECTED MATERIAL

**2.1 Over-Designation Prohibited.** Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that designator must promptly notify all parties that it is withdrawing the mistaken designation.

**2.2 Manner and Timing of Designations.** Designation under this Order requires the designator to affix the applicable legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains protected material. For testimony given in deposition or other proceeding, the designator shall specify all protected testimony and the level of protection being asserted. It may make that designation during the deposition or proceeding, or may invoke, on the record or by written notice to all parties on or before the next business day, a right to have up to 21 days from the deposition or proceeding to make its designation.

1       **2.2.1** A party or non-party that makes original documents or materials  
2 available for inspection need not designate them for protection until after the  
3 inspecting party has identified which material it would like copied and produced.  
4 During the inspection and before the designation, all material shall be treated as  
5 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY**. After the inspecting  
6 party has identified the documents it wants copied and produced, the producing  
7 party must designate the documents, or portions thereof, that qualify for protection  
8 under this Order.

9       **2.2.2** Parties shall give advance notice if they expect a deposition or other  
10 proceeding to include designated material so that the other parties can ensure that  
11 only authorized individuals are present at those proceedings when such material is  
12 disclosed or used. The use of a document as an exhibit at a deposition shall not in  
13 any way affect its designation. Transcripts containing designated material shall have  
14 a legend on the title page noting the presence of designated material, and the title  
15 page shall be followed by a list of all pages (including line numbers as appropriate)  
16 that have been designated, and the level of protection being asserted. The designator  
17 shall inform the court reporter of these requirements. Any transcript that is prepared  
18 before the expiration of the 21-day period for designation shall be treated during that  
19 period as if it had been designated **HIGHLY CONFIDENTIAL – ATTORNEY**  
20 **EYES ONLY** unless otherwise agreed. After the expiration of the 21-day period, the  
21 transcript shall be treated only as actually designated.

22       **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate  
23 does not, standing alone, waive protection under this Order. Upon timely assertion  
24 or correction of a designation, all recipients must make reasonable efforts to ensure  
25 that the material is treated according to this Order.

### 26       **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

27       All challenges to confidentiality designations shall proceed under L.R. 37-1  
28 through L.R. 37-4.

1           **4. ACCESS TO DESIGNATED MATERIAL**

2           **4.1 Basic Principles.** A receiving party may use designated material only for  
3 this litigation. Designated material may be disclosed only to the categories of  
4 persons and under the conditions described in this Order.

5           **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**  
6 Unless otherwise ordered by the Court or permitted in writing by the designator, a  
7 receiving party may disclose any material designated CONFIDENTIAL only to:

8           **4.2.1** The receiving party's outside counsel of record in this action and  
9 employees of outside counsel of record to whom disclosure is reasonably necessary;

10           **4.2.2** The officers, directors, and employees of the receiving party to whom  
11 disclosure is reasonably necessary, and who have signed the Agreement to Be  
12 Bound (Exhibit A);

13           **4.2.3** Experts retained by the receiving party's outside counsel of record to  
14 whom disclosure is reasonably necessary, and who have signed the Agreement to Be  
15 Bound (Exhibit A);

16           **4.2.4** The Court and its personnel;

17           **4.2.5** Outside court reporters and their staff, professional jury or trial  
18 consultants, and professional vendors to whom disclosure is reasonably necessary,  
19 and who have signed the Agreement to Be Bound (Exhibit A);

20           **4.2.6** During their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A);  
22 and

23           **4.2.7** The author or recipient of a document containing the material, or a  
24 custodian or other person who otherwise possessed or knew the information.

25           **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
26 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**  
27 **Further Approval.** Unless permitted in writing by the designator, a receiving party  
28 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY

1 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further  
2 approval only to:

3       **4.3.1** The receiving party's outside counsel of record in this action and  
4 employees of outside counsel of record to whom it is reasonably necessary to  
5 disclose the information;

6       **4.3.2** The Court and its personnel;

7       **4.3.3** Outside court reporters and their staff, professional jury or trial  
8 consultants, and professional vendors to whom disclosure is reasonably necessary,  
9 and who have signed the Agreement to Be Bound (Exhibit A); and

10       **4.3.4** The author or recipient of a document containing the material, or a  
11 custodian or other person who otherwise possessed or knew the information.

12       **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
13 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL**  
14 **– SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in  
15 writing by the designator:

16       **4.4.1** A party seeking to disclose to in-house counsel any material designated  
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written  
18 request to the designator providing the full name of the in-house counsel, the city  
19 and state of such counsel's residence, and such counsel's current and reasonably  
20 foreseeable future primary job duties and responsibilities in sufficient detail to  
21 determine present or potential involvement in any competitive decision-making. In-  
22 house counsel are not authorized to receive material designated HIGHLY  
23 CONFIDENTIAL – SOURCE CODE.

24       **4.4.2** A party seeking to disclose to an expert retained by outside counsel of  
25 record any information or item that has been designated HIGHLY CONFIDENTIAL  
26 – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE  
27 must first make a written request to the designator that (1) identifies the general  
28 categories of HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or



1 HIGHLY CONFIDENTIAL – SOURCE CODE information that the receiving party  
2 seeks permission to disclose to the expert, (2) sets forth the full name of the expert  
3 and the city and state of his or her primary residence, (3) attaches a copy of the  
4 expert's current resume, (4) identifies the expert's current employer(s), (5) identifies  
5 each person or entity from whom the expert has received compensation or funding  
6 for work in his or her areas of expertise (including in connection with litigation) in  
7 the past five years, and (6) identifies (by name and number of the case, filing date,  
8 and location of court) any litigation where the expert has offered expert testimony,  
9 including by declaration, report, or testimony at deposition or trial, in the past five  
10 years. If the expert believes any of this information at (4) - (6) is subject to a  
11 confidentiality obligation to a third party, then the expert should provide whatever  
12 information the expert believes can be disclosed without violating any  
13 confidentiality agreements, and the party seeking to disclose the information to the  
14 expert shall be available to meet and confer with the designator regarding any such  
15 confidentiality obligations.

16 **4.4.3** A party that makes a request and provides the information specified in  
17 paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-  
18 house counsel or expert unless, within seven days of delivering the request, the party  
19 receives a written objection from the designator providing detailed grounds for the  
20 objection.

21 **4.4.4** All challenges to objections from the designator shall proceed under  
22 L.R. 37-1 through L.R. 37-4.

## 23 **5. SOURCE CODE**

24 **5.1 Designation of Source Code.** If production of source code is necessary, a  
25 party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or  
26 includes, confidential, proprietary, or trade secret source code.

27 **5.2 Location and Supervision of Inspection.** Any HIGHLY  
28 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available

1 for inspection, in a format allowing it to be reasonably reviewed and searched,  
2 during normal business hours or at other mutually agreeable times, at an office of the  
3 designating party's counsel or another mutually agreeable location. The source code  
4 shall be made available for inspection on a secured computer in a secured room, and  
5 the inspecting party shall not copy, remove, or otherwise transfer any portion of the  
6 source code onto any recordable media or recordable device. The designator may  
7 visually monitor the activities of the inspecting party's representatives during any  
8 source code review, but only to ensure that there is no unauthorized recording,  
9 copying, or transmission of the source code.

10 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may  
11 request paper copies of limited portions of source code that are reasonably necessary  
12 for the preparation of court filings, pleadings, expert reports, other papers, or for  
13 deposition or trial. The designator shall provide all such source code in paper form,  
14 including Bates numbers and the label "HIGHLY CONFIDENTIAL – SOURCE  
15 CODE."

16 **5.4 Access Record.** The inspecting party shall maintain a record of any  
17 individual who has inspected any portion of the source code in electronic or paper  
18 form, and shall maintain all paper copies of any printed portions of the source code  
19 in a secured, locked area. The inspecting party shall not convert any of the  
20 information contained in the paper copies into any electronic format other than for  
21 the preparation of a pleading, exhibit, expert report, discovery document, deposition  
22 transcript, or other Court document. Any paper copies used during a deposition shall  
23 be retrieved at the end of each day and must not be left with a court reporter or any  
24 other unauthorized individual.

## 25 **6. PROSECUTION BAR**

26 Absent written consent from the designator, any individual who receives  
27 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY  
28 CONFIDENTIAL – SOURCE CODE information shall not be involved in the

1 prosecution of patents or patent applications concerning the field of the invention of  
2 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or  
3 other affiliate during the pendency of this action and for one year after its  
4 conclusion, including any appeals. "Prosecution" means drafting, amending,  
5 advising on the content of, or otherwise affecting the scope or content of patent  
6 claims or specifications. These prohibitions shall not preclude counsel from  
7 participating in reexamination or *inter partes* review proceedings to challenge or  
8 defend the validity of any patent, but counsel may not participate in the drafting of  
9 amended claims in any such proceedings.

## 10 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED** 11 **PRODUCED IN OTHER LITIGATION**

12 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-  
13 compliance with a lawful subpoena or court order. The purpose of the duties  
14 described in this section is to alert the interested parties to the existence of this Order  
15 and to give the designator an opportunity to protect its confidentiality interests in the  
16 court where the subpoena or order issued.

17 **7.2 Notification Requirement.** If a party is served with a subpoena or a court  
18 order issued in other litigation that compels disclosure of any information or items  
19 designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –  
20 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,  
21 that party must:

22 **7.2.1** Promptly notify the designator in writing. Such notification shall include  
23 a copy of the subpoena or court order;

24 **7.2.2** Promptly notify in writing the party who caused the subpoena or order to  
25 issue in the other litigation that some or all of the material covered by the subpoena  
26 or order is subject to this Order. Such notification shall include a copy of this Order;  
27 and

28 ///



1           **7.2.3** Cooperate with all reasonable procedures sought by the designator  
2 whose material may be affected.

3           **7.3 Wait For Resolution of Protective Order.** If the designator timely seeks  
4 a protective order, the party served with the subpoena or court order shall not  
5 produce any information designated in this action as CONFIDENTIAL, HIGHLY  
6 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –  
7 SOURCE CODE before a determination by the court where the subpoena or order  
8 issued, unless the party has obtained the designator's permission. The designator  
9 shall bear the burden and expense of seeking protection of its confidential material  
10 in that court.

11           **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

12           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
13 designated material to any person or in any circumstance not authorized under this  
14 Order, it must immediately (1) notify in writing the designator of the unauthorized  
15 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
16 designated material, (3) inform the person or persons to whom unauthorized  
17 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
18 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

19           **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
20 **OTHERWISE PROTECTED MATERIAL**

21           When a producing party gives notice that certain inadvertently produced  
22 material is subject to a claim of privilege or other protection, the obligations of the  
23 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
24 This provision is not intended to modify whatever procedure may be established in  
25 an e-discovery order that provides for production without prior privilege review  
26 pursuant to Federal Rule of Evidence 502(d) and (e).

27           **10. FILING UNDER SEAL**

28           Without written permission from the designator or a Court order, a party may

1 not file in the public record in this action any designated material. A party seeking  
2 to file under seal any designated material must comply with L.R. 79-5.1. Filings may  
3 be made under seal only pursuant to a court order authorizing the sealing of the  
4 specific material at issue. The fact that a document has been designated under this  
5 Order is insufficient to justify filing under seal. Instead, parties must explain the  
6 basis for confidentiality of each document sought to be filed under seal. Because a  
7 party other than the designator will often be seeking to file designated material,  
8 cooperation between the parties in preparing, and in reducing the number and extent  
9 of, requests for under seal filing is essential. If a receiving party's request to file  
10 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then  
11 the receiving party may file the material in the public record unless (1) the  
12 designator seeks reconsideration within four days of the denial, or (2) as otherwise  
13 instructed by the Court.

#### 14 **11. FINAL DISPOSITION**

15 Within 60 days after the final disposition of this action, each party shall return  
16 all designated material to the designator or destroy such material, including all  
17 copies, abstracts, compilations, summaries, and any other format reproducing or  
18 capturing any designated material. The receiving party must submit a written  
19 certification to the designator by the 60-day deadline that (1) identifies (by category,  
20 where appropriate) all the designated material that was returned or destroyed, and  
21 (2) affirms that the receiving party has not retained any copies, abstracts,  
22 compilations, summaries, or any other format reproducing or capturing any of the  
23 designated material. This provision shall not prevent counsel from retaining an  
24 archival copy of all pleadings, motion papers, trial, deposition, and hearing  
25 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
26 reports, attorney work product, and consultant and expert work product, even if such  
27 materials contain designated material. Any such archival copies remain subject to  
28 this Order.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
2

3 Dated: July 9, 2019

BERMAN BERMAN BERMAN  
SCHNEIDER & LOWARY, LLP

6 By /s/ Douglas A. Greer  
7 Spencer A. Schneider  
8 Douglas A. Greer  
9 Attorney for Defendant, DB  
INSURANCE COMPANY

10  
11 Dated: July 9, 2019

WARGO & FRENCH LLP

12  
13 By /s/ Mark L. Block  
14 Raymond J. Tittmann  
15 Mark L. Block  
16 Attorney for Plaintiff, SENECA  
17 SPECIALTY INSURANCE  
18 COMPANY

19 **IT IS SO ORDERED.**  
20

21 DATED: July 11, 2019

/s/ Autumn D. Spaeth  
United States Magistrate Judge

EXHIBIT A

AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Protective Order that was issued by  
the United States District Court for the Central District of California on \_\_\_\_\_  
[date] in the case of Seneca Specialty Insurance Company v. DB Insurance  
Company, United States District Court for the Central District of California, Case No.  
8:18-cv-1163-AG-ADS. I agree to comply with and to be bound by all the terms of  
this Protective Order, and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment for contempt. I solemnly promise that  
I will not disclose in any manner any information or item that is subject to this  
Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing this Order, even if  
such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]